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10/798,963	03/12/2004	Paul Leon Mustoe	10-019	7725
23164	7590	04/25/2005	EXAMINER	
LEON R TURKEVICH 2000 M STREET NW 7TH FLOOR WASHINGTON, DC 200363307			ALAM, SHAHID AL	
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			2162	

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/798,963

**Applicant(s)**

MUSTOE ET AL.

**Examiner**

Shahid Al Alam

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03122004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

AP

### **DETAILED ACTION**

1. Claims 11 – 18 are pending in this Office action.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on March 12, 2004 has been considered by the examiner.

#### ***Drawings***

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because this application contains informal drawings. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

#### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11 – 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 27 of co-pending parent application 09/778,773, now U.S. Patent No. 6,738,781 (Mustoe et al.). Although the conflicting claims are not identical, they are not patentably distinct from each other because of corresponding language that recites virtually all of the same elements and functions claimed in the previous patented invention, e.g., "A method in a processor-based system configured for executing a plurality of management programs according to respective command formats", "validating a generic command", "a command parse tree," etc.

The claimed differences would be obvious to a programmer of ordinary skill because the instant claims are merely broader and/or alternate variations of the claims recited in the co-pending application.

For example, independent claim 11 of the instant application more broadly and/or alternately claims:

“A system configured for executing a plurality of management programs according to respective command formats, the system comprising: a parser configured for accessing a character-based command parse tree, for identifying whether an input word of a generic command received from a user is a new command word, and a command parse tree for validating the generic command; a tree management process configured for selectively adding the input word to the character-based command parse tree and the command parse tree based on a determination that the input word is a new command word; and a plurality of translators configured for issuing commands for the management programs according to respective command formats, the parser outputting a prescribed command to a selected one of the translators based on the validating of the generic command.”

In contrast, claim 1 of the co-pending application (U.S. Patent 6,738,781) more narrowly and/or alternately claims:

“A method in a processor-based system configured for executing a plurality of management programs according to respective command formats, the method comprising: receiving from a user an input word representing at least a portion of a generic command; determining whether the input word is a new command word relative to a character-based command parse tree configured for identifying known command words; selectively adding the input word to the character-based command parse tree based on determining that the input word is a new command word; validating the generic command following the selectively adding step; and issuing a prescribed command of a selected one of the management programs according to the corresponding command format, based on validating the generic command; wherein the determining step includes: comparing a first character of the input word with a group of first character elements at a root level of the character-based command parse tree, the first character elements including respective initial characters of the known command words; successively traversing to a linked character element in an adjacent level of the character-based

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command parse tree based on a corresponding match between a corresponding character of the input word and a corresponding matched character element of the character-based a command parse tree; and identifying the input word as a new command word based on a determined absence of a match for one character of the input word relative to the linked character elements."

Because the instant claims merely eliminate and/or alternately claim limitations from the set of elements and functions claimed in the parent application, such modifications would be readily apparent to a programmer of ordinary skill.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to omit the additional elements of claim 1 to arrive at the claim 11 of the instant application because the person would have realized that the remaining element would perform the same functions as before. "Omission of element and its function in combination is obvious expedient if the remaining elements perform same functions as before." See *In re Karlson* (CCPA) 136 USPQ 184, decide Jan 16, 1963, Appl. No. 6857, U. S. Court of Customs and Patent Appeals.

5. Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,738,781. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are substantially similar in scope and they use the same limitations.

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Claim 1 of U.S. Patent 6,738,781 contain(s) every element of claim 11 of the instant application and as such **anticipates** claim 11 of the instant application. Claim 1 of U.S. Patent 6,738,781 could be modified to claim 11 of instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11 and 15 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 6,134,709 issued to Pratt ("Pratt") in view of U. S. Patent No. 5,732,274 issued to O'Neill, hereinafter known as "O'Neill"

With respect to claim 11, Pratt teaches a system configured for executing a plurality of management programs according to respective command formats (column 2, lines 50 – 63), the system comprising:

a parser configured for accessing a character-based command parse tree, for identifying whether an input word of a command received from a user is a any command word (column 2, lines 54 – 58), and a command parse tree for validating the command (column 5, lines 26 – 45);

a tree management process configured for selectively adding the input word to the character-based command parse tree and the command parse tree based on a determination that the input word is a new command word (column 2, lines 54 – 63); and

a plurality of translators configured for issuing commands for the management programs according to respective command formats, the parser outputting a prescribed command to a selected one of the translators based on the validating of the generic command (column 2, lines 50 – 58; column 5, lines 26 – 45 and column 7, lines 9 – 11).



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With respect to claim 11, Pratt teaches validation of acceptable commands (“divergence between the various acceptable commands” – see column 7, lines 8 –11). Pratt does not explicitly indicate a generic command. In other words, Pratt does not explicitly indicate a generic command and the use of the generic command to issue other commands.

With respect to claim 11, more specifically regarding the “generic command” as recited in claim 11, the following section of O’Neill are believed to be pertinent:

A further aspect of the invention is to provide **translation of the common query language to one of a plurality of target languages**, wherein a target language is suitable to access the desired data (column 1, lines 61 – 64).

The above and other aspects of the invention are accomplished in a system wherein users can specify questions to be asked of a data source in a manner that is independent of the actual storage mechanism for the data source. For example, users are able to ask "How many customers live in Colorado". The user first selects a target language, typically by selecting a data file containing the desired data and which can be accessed by the target language. The user then enters the query, which is parsed using the common query language definition stored in a meta dictionary. The system produces a series of tokens representing the query, and the system then translates the tokens to generate language statement(s) for the target language. The system then sends the target language statement(s) to the target database management system to obtain the answer to the query (column 2, lines 4 – 18).

The common definition language is based on allowing the user to specify what he/she wants to accomplish **in a user-friendly manner**, regardless of the particular quirks of a specific language (column 3, lines 29 – 32).

A component subject area of the meta **dictionary contains parsed information** about the attributes and summarized data to retrieve from a data source for a particular query. Any calculated fields and complex conditions are defined simply by name and **stored as generic expressions** in the function and function arguments definition area (column 3, lines 35 – 40).

The use of a generic command in O’Neill is highlighted for applicant’s convenience.

With respect to claim 11, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to store generic command in the command storage 310 of Pratt to make the combined system more user friendly as suggested by

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O'Neill (column 3, lines 29 – 32 "(t)he common definition language is based on allowing the user to specify what he/she wants to accomplish in a user-friendly manner, regardless of the particular queries of a specific language). In this particular instance a user would have used a generic command from the token storage 310. As for issuing a target-dependent command (i.e., prescribed command) since the meta dictionary of O'Neill would perform the necessary format translation (O'Neill: column 1, lines 61-64).

As to claim 15, the command parse tree is configured for specifying valid generic commands relative to a prescribed generic command format and having elements each specifying at least one corresponding generic command component and a corresponding at least one command action value, the parser identifying one of the elements as a best match relative to the generic command, the parser outputting the prescribed command based on the identified one element (Pratt: column 7, lines 1 – 21).

As to claim 16, the parser comprises a command word translation table configured for storing for each prescribed command word a corresponding token for identification of a matching token, the parser configured for determining a presence of the matching token within the command parse tree for each input command word (Pratt: column 2, lines 50 – 58).

As to claim 17, the parser recursively traverses the command parse tree based on an order of the input command words for identification of the matching token within the identified one element (Pratt: column 1, lines 40 – 56 and column 5, lines 47 – 55).

As to claim 18, the parser validates at least a portion of the generic command by identifying the one element having the best match relative to the portion of the generic command (Pratt: column 5, lines 26 – 45 and column 7, lines 1 – 7).

***Allowable Subject Matter***

7. Claims 12 – 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggests steps of limitation as claimed in claim 12, wherein the character-based command parse tree is configured for identifying known command words, the character-based command parse tree having a root level including a group of first character elements including respective initial characters of the known command words, and at least one adjacent level having at least one linked character element referenced by one of the first character elements, the at least one linked character element configured for identifying a corresponding successive character of one of the known command words.

Claims 13 and 14 are dependant on claim 1 and for the purpose of dependency, these claims could also be allowable.

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***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Please refer to the references listed on the attached PTO-892, which are not relied in the claim rejections detailed above.

***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shahid Al Alam  
Primary Examiner  
Art Unit 2162

16 April 2005